

**Sidlingappa BIn Irappa and ors. Vs. Shankarappa BIn Karibasappa and ors.**

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**Court :** Mumbai

**Decided On :** Jun-23-1903

**Reported in :** (1904)ILR27Bom361

**Judge :** E.T. Candy, C.S.I., Acting C.J. and; Chandavarkar, J.

**Appellant :** Sidlingappa BIn Irappa and ors.

**Respondent :** Shankarappa BIn Karibasappa and ors.

**Judgement :**

E.T. Candy, C.S.I., Acting C.J.

1. We think that the Subordinate Judge, First Class, was wrong in directing further orders to be made for execution as prayed for by the applicants.

2. In Suit No. 486 of 1894 a decree was passed for the dissolution of a certain partnership consisting of four partners. The dissolution was declared to date from the 14th January, 1894, and a receiver was appointed with power to collect the assets and pay the debts of the firm which had been dissolved. In that case the decree of the Subordinate Judge, which was confirmed by the High Court, gave elaborate directions to the receiver as to how he was to act. By Clause 3 he was to take possession of the whole immoveable property belonging to the partnership, and on any partner paying the price of one-fourth share in the same, he was to deliver such share into the possession of that partner. It has not been contended that any partner has paid his share. It was further provided by Clause 10 of the decree that in default of such payment the receiver was, if he required fund to satisfy all the debts payable by the firm, to proceed to sell the whole immoveable properties and pay off all the remaining debts out of such proceeds. If any surplus was left out of the proceeds, on the payment of all the debts, the same was to be shared by all the four partners in equal proportion.

3. There was a further Clause (No. 5) dealing with certain specified sums which were to be paid by three of the partners to the receiver. One of those partners was Shankarappa, and he was ordered to pay Rs. 4,512-5-71/2. It is asserted before us that that money has not been paid. This same Shankarappa with his undivided brothers representing a Hindu family now seeks to execute a decree in a suit brought by Rachappa, the late managing member of the family, for a debt due by the said firm, and they seek to obtain execution by the attachment and sale of the above described decree which had been passed in the suit for dissolution of partnership.

4. We think, having regard to the principle laid down by Mr. Justice Farran in the case of J. Khan v. Ali Mahomed Haji Umar (1892) 16 Bom. 577 followed in the case of

Mahommed Zohuruddeen v. Mahommed Noorooddeen (1893) 21 Cal. 85 it is very doubtful whether such an execution can be allowed. An officer of the Court is now executing that decree, and collecting the assets of the late firm and paying the debts of that firm, the decree-holders in the latter suit ranking as creditors of that firm. But it is admitted before us that the decree in the suit for dissolution of partnership can be so far regarded as a money-decree, and that therefore it can be attached but cannot be sold. This being so, it is clear that the applicants' remedy is not by a sale of the decree, but by proceeding under the provisions of Section 273 of the Civil Procedure Code: see the case of Gopal v. Joharimal (1891) 16 Bom. 522.

5. We therefore vary the order of the Subordinate Judge, and direct that the procedure laid down in Section 273 be followed. The order as to sale will be set aside. Each party to bear his own costs in this Court.

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